

REMARKS

The last Office Action has been carefully considered.

It is noted that claims 1-3, 5, 7 are rejected under 35 U.S.C. 102(b) over U.S. patent 288.

Claims 4, 6, 8, 9, are rejected under 35 U.S.C. 103(a) over the U.S. patent 288.

The Information Disclosure Statement is objected to. The claims are also rejected under 35 U.S.C. 112.

In connection with the Examiner's rejection to the Information Disclosure Statement, applicant has submitted a list of all references as required.

In view of the Examiner's rejection of the claims under 35 U.S.C. 112, applicant wishes to make the following remarks.

The body of the device in accordance with the present invention converts UV light into growth enhancing light because it contains a photo-transforming additive particles which convert UV light into growth-enhancing light, to enhance photosynthesis by increasing the conversion of a UV light spectrum. The photo transforming additive is specified as an example in the second paragraph on page 7 of the specification, and also the reference is made to the previous application 09/178,542, now U.S. patent no. 6,153,665. It is true that each plant requires a different light range, however, such ranges are well known in the art, they are not germane to the present invention. The photo-transforming additive particles which are specified in the above mentioned paragraph on page 7, are formed of particles with the size within the range of 10A to 50  $\mu$ m.

It is believed that the questions raised by the Examiner are articulately answered and the Examiner's grounds for the formal rejection of the claims should be considered as no longer tenable and should be withdrawn.

In connection with the Examiner's rejection of the claims over the art, applicant has amended claim 1 by introducing into it the features of

claim 8. Also additional dependent claims 10 and 11 have been submitted, and the corresponding dependent claims have been amended.

It is respectfully submitted that the new features of the present invention as defined in claim 1 are not disclosed in the references and can not be derived from them as a matter of obviousness. Claim 1 specifically defines that the device for enhancing growth of plants and vegetables have a body having photo-transforming qualities provided by corresponding additive particles which have photo-transforming qualities that convert UV light into growth-enhancing light to enhance photosynthesis by increasing conversion of a UV light spectrum.

Turning now to the references and particularly to the U.S. patent no. 288 cited by the Examiner, it is respectfully submitted that the reference does not contain a body having additive particles which have photo-transforming qualities and convert UV light into growth-enhancing light. In the invention disclosed in the invention, a Fresnel lens is utilized with a light membrane for respectively focusing solar rays or artificial light rays, and the light rays having only the desired light component (others are cut off) are guided into the optical conductor and also can be changed in accordance

with a diameter of the optical conductor. Light emitters L are used for causing a photosynthesis reaction.

As can be seen, the reference is significantly different from the applicant's invention. In particular, it does not have a body in which photo-transmitting additive particles are introduced for converting UV light into growth-enhancing light. This has nothing to do with optical elements used in the U.S. patent to '288.

The original claims were rejected over this reference under 35 U.S.C. 102 as anticipated, in connection with this, applicant wishes to cite the decision Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the reference does not contain all elements as defined now in the amended claim 1, and therefore the anticipation rejection should be considered as no longer tenable and should be withdrawn.

The present invention can not be considered as obvious from the reference. In order to arrive at the invention from the reference, the reference has to be fundamentally modified, in particular by completely redesigning the optical device disclosed in the reference and using in it the new features of the present invention which were first proposed by applicant. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has also been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision in re Randol and Redford (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggestion; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Definitely, the reference does not contain any hint or suggestion for such modifications.

The Examiner's attention is respectfully directed from the features of claims 10 and 11. Claim 10 in addition to the features of claim 1, specifically defines that the body is enclosed in a non-transparent casing

which protects the body from undesirable effects of mechanical damages or environmental influences. The Examiner indicated that such feature is obvious. However, the reference cited by the Examiner does not disclose this feature at all. This feature provides for the highly advantageous results in maintaining the efficiency and operativeness of the device, by eliminating the deterioration of the device as a result of mechanical damages and environmental influences.

It is believed that claim 10 should be considered as patentably distinguishing over the art *per se* and should be allowed.

Claim 11 specifically defines that the device has a light conduit which is composed also of the material having photo-transforming qualities, and a body and the conduit are proposed of the same material. This is exceptionally important. Not only the body provides a conversion of UV light into a growth-enhancing light, but also the conduit on the way from the body to the plant provides the same results. Also, a transition from the body to the conduit is smooth and efficient for transmitting the light, since the body and the conduit are composed of the same material. Finally, the manufacturing of the device is also facilitated since the body and the conduit can be made

simultaneously, so that it is not necessary to connect a separately made conduit to a separately made body.

The new features of the present invention as defined in claim 11 are not disclosed in the reference.

The above-mentioned new features of the present invention defined in claims 10 and 11 also provide for highly advantageous results which can not be accomplished by the construction disclosed in the references. It is well known that in order to support a valid rejection the art must also suggest that it would accomplish applicant's results. This was stated by the Patent Office Board of Appeals, in the case *Ex parte Tanaka, Marushima and Takahashi* (174 USPQ 38), as follows:

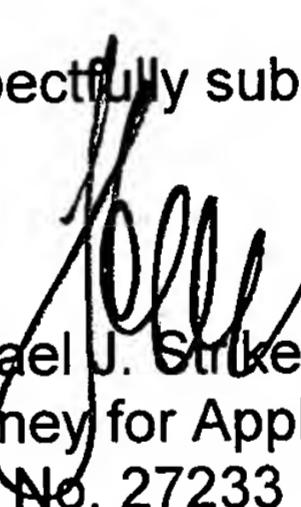
Claims are not rejected on the ground that it would be obvious to one of ordinary skill in the art to rewire prior art devices in order to accomplish applicants' result, since there is no suggestion in prior art that such a result could be accomplished by so modifying prior art devices.

It is therefore believed that claims 10 and 11 should also be considered as patentably distinguishing over the art and should be allowed.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

  
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